

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.

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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of )  
Interconnection and Resale ) CC Docket No. 94-54  
Obligations Pertaining to )  
Commercial Mobile Radio Services )

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COMMENTS OF HORIZON CELLULAR TELEPHONE COMPANY

Horizon Cellular Telephone Company ("Horizon") hereby submits the following Comments in response to the above-captioned Notice of Proposed Rule Making.<sup>1/</sup>

The Commission has concluded that it would be premature to propose or adopt rules of general applicability requiring direct interconnection arrangements between Commercial Mobile Radio Service ("CMRS") providers. In view of the "nascency of many CMRS providers, and the rapidly developing technologies they may be employing," the Commission has decided that it "cannot at this time make general conclusions about either the technical nature of CMRS-to-CMRS interconnection, the costs involved, or the nature of any rules that would best ensure its implementation."<sup>2/</sup> Instead, given the emerging competition in the CMRS marketplace, the Commission has expressed confidence that the benefits of CMRS-to-CMRS interconnection will be most efficiently realized through private negotiation and reasoned business judgements, without the need for regulatory intervention.

Horizon supports the Commission's conclusion. The Commission's market-oriented approach with respect to interconnection issues is sound public policy, and the best method of promoting the continued development of vibrant CMRS competition.

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<sup>1/</sup> Notice of Proposed Rule Making, In the Matter of Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, CC Docket No. 94-54 (released April 20, 1995) ("Notice").

<sup>2/</sup> Id. at ¶ 2.

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I. A MANDATORY INTERSTATE INTERCONNECTION OBLIGATION IS UNNECESSARY

Horizon agrees with the Commission's conclusions that imposition of a general interstate interconnection obligation is premature and unwarranted.<sup>3/</sup> As the responses to the Commission's Notice of Inquiry on interconnection revealed and as the Commission has acknowledged, a generalized interconnection obligation has little record support -- in large part because the CMRS industry is undergoing rapid technological change. With ESMR providers begin to build out their networks and new PCS licensees beginning to making decisions on fundamental technical standards, it is virtually impossible to form any generalized conclusions either about the technical nature of CMRS-to-CMRS interconnection or the costs involved.

In addition, because current and emerging mobile communications networks are in such a state of continuing development, the Commission is unable to predict the negative consequences that imposing a general interconnection obligation would have on emerging providers' infrastructure development and network efficiency.<sup>4/</sup> Small providers like Horizon, for example, have implemented a business strategy for years of covering rural and less densely populated areas as a means of maintaining a competitive advantage. A mandatory interconnection obligation could diminish that hard-earned competitive advantage by allowing other CMRS providers to enter a market and exercise an automatic right to piggyback on Horizon's infrastructure investment. As facilities-based providers confront this "free rider" problem, mandatory CMRS interconnection -- particularly where there is no evidence of traffic that would warrant a need for such a requirement -- would have the anomalous result of functioning as a disincentive for further network expansion, and would

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<sup>3/</sup> Id. at ¶¶ 29-31.

<sup>4/</sup> Id. at ¶ 29.

"freeze" capital that might otherwise be used to build additional cell sites to serve rural America.<sup>5/</sup>

In any event, the Commission's decision to refrain from mandating CMRS interconnection is supported by the dispositive fact all CMRS providers currently can interconnect with users of any other network through their local exchange carriers.<sup>6/</sup> As the Commission acknowledges, this option greatly reduces the potential for CMRS providers to use denial of interconnection as an anticompetitive tool because it eliminates the possibility that a CMRS carrier could limit another provider's service by refusing to interconnect.<sup>7/</sup>

Ultimately, Horizon believes that the Commission's confidence in the marketplace with respect to interconnection issues is justified.<sup>8/</sup> In a competitive environment featuring numerous facilities-based CMRS providers, carriers will negotiate CMRS-to-CMRS interconnection arrangements as demand requires, without the need for regulatory intervention.<sup>9/</sup>

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<sup>5/</sup> In addition, small or rural providers like Horizon do not have the personnel or resources to tolerate being forced into protracted interconnection negotiations if other parties were to wield a mandatory interconnection obligation offensively. Such mandatory negotiations would again pose a significant drain on resources that otherwise would be concentrated on providing better and more expansive cellular service.

<sup>6/</sup> Id. at ¶ 30.

<sup>7/</sup> See id. at ¶ 31.

<sup>8/</sup> See id. at ¶ 37 ("For now, we are confident that the decision of interconnection 'where warranted' is best left to the business judgment of the carriers themselves.").

<sup>9/</sup> In view of the sound public interest reasons cited in the Notice which counsel against imposing a general interconnection obligation on CMRS providers, Horizon believes that the FCC should curtail the states' ability to interfere with the Commission's policy decision, and should preempt their authority to regulate CMRS interconnection. The Commission has already exercised its authority to preempt state regulation over the kinds of and rights to CMRS interconnection with LECs. See In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, GN Docket No.

## II. THE COMMISSION MUST CONTINUE TO REJECT SWITCH-BASED RESALE PROPOSALS

In the Notice, the Commission has rejected the notion that resellers should be granted the right to physically interconnect their switches to cellular providers' networks with the concurrent right to "unbundle" those networks on a piecemeal basis, *i.e.*, only pay for usage of certain portions of the cellular provider's network. The Commission recognizes, both explicitly and implicitly, that such proposals are not only unnecessary, but would impose enormous costs on the Commission, industry and consumers.<sup>10/</sup>

There is simply no need for resellers to have mandatory switch-to-MTSS interconnection. These providers today can negotiate such arrangements with cellular providers, and will have countless more opportunities to interconnect directly with CMRS networks in the near future as the industry continues to expand in size and provider diversity. At a minimum, as mentioned, resellers can obtain interconnection through LEC facilities.<sup>11/</sup> Given this fact, there is no need for further Commission intervention.

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93-252, Second Report and Order, 74 Rad. Reg. 2d (P & F ) 835, at ¶¶ 230-31; *see* In the Matter of the Need to Promote Competition and Efficient Use of the Spectrum for Radio Common Carrier Services, Declaratory Ruling, 2 FCC Rcd 2910 (1987), at ¶¶ 17-18. The Commission also recently denied several state requests to retain authority over interstate cellular service rates. *See, e.g.*, In the Matter of Petition of the People of the State of California and the public Utilities Commission of the State of California to Retain Regulatory Authority Over Intrastate Cellular Service Rates, PR Docket No. 94-105, Report and Order (released May 19, 1995), at ¶ 96. Horizon believes that the same public interest reasons and legal authority support the Commission's need and ability to preempt the states here, and urges the Commission to do so.

<sup>10/</sup> See Notice at ¶ 96.

<sup>11/</sup> For example, the market for mobile voice telecommunications will soon encompass up to six broadband PCS licensees who have already or will soon purchase their licenses at auction, and wide-area SMR providers are now beginning to provide CMRS service. This influx of new wireless facilities-based competition highlights that there is simply no need for resellers to have a right to physically attach to cellular networks.

Moreover, as shown by the already-uniform opposition of the CMRS industry to such proposals, switch-based resale would engender tremendous economic and technical costs but bring no benefits for the facilities-based carriers who have been the true innovators and investors in the nation's wireless infrastructure. Resellers would simply gain a right to parasitically "free ride" on these carriers' investment and expertise, all the while picking apart and unbundling their networks in manner that could lead to their demise. This is hardly a signal the Commission should send to the CMRS marketplace at a time when industry is preparing to invest billions more in new wireless technology.

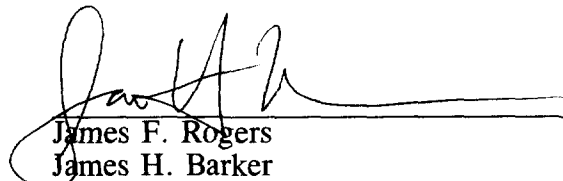
The Commission has properly rejected the reseller switch proposals and should affirm its tentative conclusion in the Notice not to implement them.

### III. CONCLUSION

The Commission should affirm the its conclusions set forth in the Notice, subject to the comments set forth above.

Respectfully submitted,

HORIZON CELLULAR TELEPHONE COMPANY

A handwritten signature in black ink, appearing to read "James F. Rogers", is written over a horizontal line.

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